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10/807,402	03/24/2004	Walter Howard	77072	3856
48940 7590 03/20/2008 FITCH EVEN TABIN & FLANNERY 120 S. LASALLE STREET SUITE 1600 CHICAGO, IL 60603-3406				
EXAMINER				
BECKER, DREW E				
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1794				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/807,402

**Applicant(s)**

HOWARD ET AL.

**Examiner**

Drew E. Becker

**Art Unit**

1794

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 18 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1, 3-14 and 18-29 is/are pending in the application.
- 4a) Of the above claim(s) 28 and 29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-14 and 18-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election without traverse of group I in the reply filed on 7/18/07 is acknowledged.

Claims 28-29 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected group, there being no allowable generic or linking claim.

***Drawings***

2. The informal drawings are not of sufficient quality to permit examination. Accordingly, replacement drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to this Office action. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. In particular, Figures 1-3 appear to have drawn by hand and do not possess sufficient detail with regards to line integrity and numbering clarity. It should be noted that many of applicant's claims rely upon specific dimensions and ratios of physical structures illustrated in the figures, particularly Figure 3 as noted by applicant on page 10 of the response dated 2/14/08.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 8 and 24 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The application discloses only a flour with greater than 11% protein, however claims 8 and 24 recite the dough material having at least 11% protein.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
7. Claims 6 and 22 recite "wherein a cross-sectional shape of the extruded rope substantially corresponds to a cross sectional shape of the extruded rope". It is not clear what differences in shape would "substantially correspond".
8. Claim 14 recites "drawing a vacuum pressure on the bagel dough supply of a magnitude effective for (i) entraining bagel dough into the dough transport mechanism". It is not clear what level of pressure is required. This limitation appears to contradict

common logic because a low pressure (ie vacuum) would act to retain the dough at the supply and resist any movement to a region of higher pressure, such as an extrusion nozzle.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1, 3-7 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Tracy et al [Pat. No. 5,686,128].

Tracy et al teach a method for making a filled dough product by providing a horizontal extrusion head with a tapering outer horn and a coaxial inner horn (Figure 10, #90; Figure 4, #30), conducting dough between the two horns (column 11, lines 10-23), conducting an edible filling through the inner horn (column 10, line 58 to column 11, line 10), the outer horn having a length of about 1.25" (column 9, line 56), the horn producing a co-extrudate rope with a diameter of less than about 0.5" (column 10, line 53), the extrusion head inherently producing less dough shearing than larger lengths, the outer horn tapering inwardly (Figure 11, #94), the inner horn having a substantially constant cross-section (Figure 4, #30), the L/D ratio being 2.5 or greater (column 9, line 56; column 10, line 53), and the filling including cheese and fruit material (column 10, line 58 to column 11, line 10).

Art Unit: 1794

11. Claims 1, 3-4, 6, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Pfeilstetter [Pat. No. 4,486,163].

Pfeilstetter teaches a method for making a filled dough by providing an extrusion head with a tapering outer horn passage (Figure 1, #3), a constant coaxial inner horn passage (Figure 1, #9), conducting dough through the outer horn passage and a filling through the inner horn passage (column 4, Example 1), the L/D ratio of the outer horn being less than 5 (Figure 1, #3), the filling including a dairy product in the form of cheese (column 4, Example 2).

12. Claims 1, 4, 6, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Sheen et al [Pat. No. 6,328,550].

Sheen et al teach a method for making a filled dough by providing an extrusion head with a tapering outer horn passage (Figures 5-7, #13), a coaxial inner horn passage (Figures 8-10), conducting dough through the outer horn passage and a filling through the inner horn passage (Figures 1-3), the L/D ratio of the outer horn being less than 5 (Figures 5-7, #13), the filling including a dairy product in the form of cheese (column 4, line 19).

### ***Claim Rejections - 35 USC § 103***

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 10-14, 18-20, 22-23, and 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tracy et al as applied above, in view of Baras [US 2002/0122858A1].

Tracy et al teach the above mentioned concepts as well as providing pressure inducing feed means such as pumps and extruders. Tracy et al do not recite the filling being cream cheese, the use of bagel dough, cutting the rope into segments, connecting the ends of the segments to create rings, proofing, and cooking via steam and boiling. Baras teaches a method for making filled bagel products by coextruding a bagel dough and cream-cheese filling (Figure 1, #15), cutting the rope into segments (paragraph 0014), connecting the ends of the segments to create rings (paragraph 0014), proofing (paragraph 0015), boiling (paragraph 0002), and cooking via steam (paragraph 0016). It would have been obvious to one of ordinary skill in the art to incorporate the bagel processing of Baras into the invention of Tracy et al since both are directed to methods of making filled dough products, since Tracy et al already included many different types of dough and filling, since Baras simply did not describe the extrusion means in detail, and since the combination of Baras and Tracy et al would have provided a fast and convenient means for producing cream-cheese filled bagels.

15. Claims 10-14, 18-20, 22-23, and 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pfeilstetter as applied above, in view of Baras [US 2002/0122858A1].

Art Unit: 1794

Pfeilstetter teaches the above mentioned concepts as well as providing pressure inducing feed means such as pumps and extruders, and cutting the rope into segments (Example 1). Pfeilstetter do not recite the filling being cream cheese, the use of bagel dough, connecting the ends of the segments to create rings, proofing, and cooking via steam and boiling. Baras teaches a method for making filled bagel products by coextruding a bagel dough and cream-cheese filling (Figure 1, #15), cutting the rope into segments (paragraph 0014), connecting the ends of the segments to create rings (paragraph 0014), proofing (paragraph 0015), boiling (paragraph 0002), and cooking via steam (paragraph 0016). It would have been obvious to one of ordinary skill in the art to incorporate the bagel processing of Baras into the invention of Pfeilstetter since both are directed to methods of making filled dough products, since Pfeilstetter already included many different types of dough and filling, since Baras simply did not describe the extrusion means in detail, and since the combination of Baras and Pfeilstetter would have provided a fast and convenient means for producing cream-cheese filled bagels.

16. Claims 10-14, 18-20, 22-23, and 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sheen et al as applied above, in view of Baras [US 2002/0122858A1].

Sheen et al teaches the above mentioned concepts as well as providing pressure inducing feed means such as pumps and extruders, and cutting the rope into segments (column 4, line 22). Sheen et aldo not recite the filling being cream cheese, the use of bagel dough, connecting the ends of the segments to create rings, proofing, and cooking via steam and boiling. Baras teaches a method for making filled bagel products

Art Unit: 1794

by coextruding a bagel dough and cream-cheese filling (Figure 1, #15), cutting the rope into segments (paragraph 0014), connecting the ends of the segments to create rings (paragraph 0014), proofing (paragraph 0015), boiling (paragraph 0002), and cooking via steam (paragraph 0016). It would have been obvious to one of ordinary skill in the art to incorporate the bagel processing of Baras into the invention of Sheen et al since both are directed to methods of making filled dough products, since Sheen et al already included many different types of dough and filling, since Baras simply did not describe the extrusion means in detail, and since the combination of Baras and Sheen et al would have provided a fast and convenient means for producing cream-cheese filled bagels.

17. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tracy et al (or Pfeilstetter, or Sheen et al) as applied above, in view of Burger [Pat. No. 6,001,400].

Tracy et al teach the above mentioned concepts. Tracy et al do not recite the dough having at least 11% protein. Burger teaches a method for making filled bagel products wherein the dough having at least 11% protein (column 2, line 62). It would have been obvious to one of ordinary skill in the art to incorporate the protein levels of Burger into the invention of Tracy et al since both are directed to methods of making filled dough products, since Tracy et al teach many different types of doughs, since bagels were commonly filled as shown by Burger, and since bagels conventionally required high protein flour for their production.

18. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tracy et al (or Pfeilstetter, or Sheen et al), in view of Baras, as applied above, in view of Burger [Pat. No. 6,001,400].

Tracy et al and Baras teach the above mentioned concepts. Tracy et al and Baras do not recite the dough having at least 11% protein. Burger teaches a method for making filled bagel products wherein the dough having at least 11% protein (column 2, line 62). It would have been obvious to one of ordinary skill in the art to incorporate the protein levels of Burger into the invention of Tracy et al, in view of Baras, since all are directed to methods of making filled dough products, since Tracy et al teach many different types of doughs, since bagels were commonly filled as shown by Baras and Burger, and since bagels conventionally required high protein flour for their production.

19. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tracy et al (or Pfeilstetter, or Sheen et al), in view of Baras, as applied above, and further in view of Campbell [Pat. No. 4,332,538].

Tracy et al and Baras teach the above mentioned concepts. Tracy et al and Baras do not recite a twin screw conveyor. Campbell teach a method for making dough products by transferring the ingredients via twin screw conveyor (Figure 1, #12). It would have been obvious to one of ordinary skill in the art to incorporate the twin screw conveyor of Campbell into the invention of Tracy et al, in view of Baras, since all are directed to methods of extruding dough, since Tracy et al already included feed devices for the dough and filling (column 5, line 25; column 6, line 23), and since the twin screw conveyor of Campbell provided efficient and timely feeding of dough materials.

***Response to Arguments***

20. Applicant's arguments filed 2/18/08 have been fully considered but they are not persuasive.

Applicant has not responded to the 112(1) rejection of claims 8 and 24.

Applicant argues that claim 14 is clear. However, applicant has not provided any further explanation. Therefore, the 112(2) rejection is maintained.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a constant and consistent tapering of the outer horn passage) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant argues that Tracy et al do not recite a tapered outer horn passage. However, Figures 10-11 of Tracy et al clearly illustrate an outer horn passage which tapers from an inlet diameter to a smaller outlet diameter (#94).

***Conclusion***

21. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 8am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Drew E Becker/  
Primary Examiner, Art Unit 1794